

Opinion No. 38-1968

June 7, 1938

BY: FRANK H. PATTON, Attorney General,

TO: Brig. Gen. Russell C. Charlton The Adjutant General Santa Fe, New Mexico

{*239} This is to acknowledge receipt of your letter of even date. You state that an emergency has been declared to exist by Governor Clyde Tingley in the fight on grasshoppers in Union County and that he has directed a portion of the National Guard of this State to travel to Union County and assist civil authorities in eradicating the grasshoppers. The National Guard is to furnish drivers and transportation to distribute the poison. You also state that this will necessitate trucks and drivers and that the area to be covered consists of rough terrain and that it will be necessary to do a certain amount of repair work to equipment before and after the advent of the National Guard into the area. Predicated upon the above statement, you wish an opinion upon the following:

"1. Not having sufficient transportation, is it legal to rent trucks for transportation or to purchase said truck if none are available at reasonable rental, and will the State Treasurer pay this as provided in Section 93-174, Compilation of 1929, Laws of New Mexico, as amended by Chapter 39, Section 12, Laws of 1931?

"2. Will the purchase of tires and other necessary repairs or equipment to get and to keep our vehicles in working condition be authorized under the law quoted in one (1) above?"

1. Section 12, Chapter 39, Session Laws of 1931 provides that all officers or enlisted men, while on duty or assembled pursuant to the orders of the Governor, shall receive, in addition to certain pay and allowances specified in the section, compensation for transportation of the troops. If you do not have sufficient transportation as stated in the first query of your request, it is my opinion that expenses for transportation would include and permit the renting of trucks. I think this would certainly be so if transportation by trucks is the only feasible means of transporting the troops and you do not have sufficient trucks on hand to transport the same.

The second part of your query is more difficult to answer. I am confronted with Section 1 of Chapter 89, Laws of 1933, which provides the manner in which expenditures for purchases of equipment and property are to be made. It is unnecessary for me to detail the same at length as you are familiar with them. {*240} An exception is made to the effect that the Governor may suspend the operation of the Section for reasons stated therein, which reasons you are also acquainted with. I am unable to convince myself that the Section authorizes suspension of the restrictions imposed upon the purchase of equipment in cases of this kind. I am therefore compelled to answer the second part of your first inquiry in the negative.

2. It is my opinion that money actually expended for repair of your trucks to get them into condition can reasonably be said to come within the meaning of expenses for transportation. It is likewise my opinion that the actual cost of maintenance of the trucks may be included in cost of transportation. This I believe would include the purchase of automobile tires, although the question is debatable. We are giving a liberal interpretation in view of the exigencies of the case presented. As to the other equipment referred to in your query, it would depend upon whether or not the equipment referred to is that of a permanent nature or whether or not it is auxiliary to the actual repair and maintenance of the trucks.

Trusting that this answers your questions, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.